

## LATHAM & WATKINS LLP

December 12, 2016

**BY HAND DELIVERY**  
**REQUEST FOR CONFIDENTIAL TREATMENT**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

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Re: Request for Confidential Treatment, Request For Review by Charter Communications, Inc. (d/b/a Time Warner Cable Business LLC) of Funding Decisions by the Universal Service Administrator, CC Docket No. 02-06

Dear Ms. Dortch,

Pursuant to Sections 0.457(d) and 0.459 of the Commission's rules,<sup>1</sup> Charter Communications, Inc. ("Charter") hereby requests confidential treatment of certain information contained within the enclosed Request for Review and its exhibits (the "Confidential Material"). The Confidential Material is being submitted in support of a Request for Review of a funding decision by the Universal Service Administrator and includes detailed information regarding commercial agreements and sensitive pricing information for telecommunications services provided by Charter.

The Confidential Material includes sensitive commercial and financial information that is confidential and thus should not be routinely made available for public inspection pursuant to Section 0.457(d) of the Commission's rules.<sup>2</sup> As explained in greater detail below, each of the factors listed under Section 0.459(b) of the Commission's rules justifies withholding the Confidential Material from public inspection.<sup>3</sup>

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<sup>1</sup> 47 C.F.R. §§ 0.457(d), 0.459.

<sup>2</sup> 47 C.F.R. § 0.457(d).

<sup>3</sup> *Id.* § 0.459(b).

- (1) **Identification of the specific information for which confidential treatment is sought.** Charter respectfully requests that the Commission withhold from public inspection, and afford confidential treatment to all information contained within the braces (“{ }”).
- (2) **Description of the circumstances giving rise to the submission.** The Confidential Material is being submitted in support of a Request for Review of a funding decision by the Universal Service Administrator and includes detailed information regarding commercial agreements and sensitive pricing information for telecommunications services provided by Charter.
- (3) **Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.** The Confidential Material contains sensitive commercial and financial information which would customarily be guarded from competitors. Notably, Charter has provided the Commission with pricing information that would be sufficient to provide a competitor or potential customer with highly sensitive information regarding Charter’s pricing strategy, negotiating positions, and sales history, as well as similarly sensitive pricing information belonging to a non-party to this proceeding. The public disclosure of the Confidential Material would place Charter at a disadvantage in negotiations with other parties and more generally could damage Charter’s position in the marketplace, as explained below.<sup>4</sup>
- (4) **Explanation of the degree to which the information concerns a service that is subject to competition.** The Confidential Material concerns Charter’s pricing for telecommunications services and is presented in immediate contrast to pricing from competitive providers proposing to the same request for proposal. Charter faces vibrant competition from other telecommunications providers and must compete vigorously to win and maintain the business of its school and library customers.
- (5) **Explanation of how disclosure of the information could result in substantial competitive harm.** As noted above, the Confidential Material contains sensitive commercial and financial information, the disclosure of which would provide other telecommunications providers with valuable insight into Charter’s negotiating positions and facilitate the development of strategic and potentially competitively harmful responses by those providers. In addition, competitors could use this information to exploit perceived weaknesses in Charter’s pricing and marketing strategies, conferring on Charter’s competitors a competitive advantage in future contract negotiations with school and library customers. For

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<sup>4</sup> See *National Parks and Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

this reason, and as noted above, the Commission does not make such records routinely available for public inspections.<sup>5</sup>

- (6) **Identification of any measures taken by the submitting party to prevent unauthorized disclosure.** The Confidential Material was provided to Charter on a confidential basis by the Public Schools of Robeson County, North Carolina. The Confidential Material contains information that is treated as proprietary and confidential by Charter. Charter's business practices are designed to ensure that such information is not routinely disclosed to third parties (except a particular customer or potential customer), especially within a single document or from a single source.
- (7) **Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.** While the document has been in the possession of the Public Schools of Robeson County, to the best of Charter's knowledge, the Confidential Material has not been disclosed previously to third parties.
- (8) **Justification of the period during which the submitting party asserts that material should not be available for public disclosure.** Charter requests that the Confidential Material be treated as confidential for an indefinite period of time, as even historical data with respect to the company's proposed prices could give competitors undue insight into Charter's business practices and place the company at a competitive disadvantage.
- (9) **Other information that may be useful in assessing whether Charter's request for confidentiality should be granted.** The Confidential Material falls under Exemption 4 of the Freedom of Information Act (FOIA), which provides that the public disclosure requirement of the statute "does not apply to matters that are . . . (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential."<sup>6</sup> The Confidential Material includes sensitive trade secrets and commercial and financial information that squarely fall within Exemption 4, insofar as this information is (i) commercial or financial in nature; (ii) obtained by a person outside government; and (iii) privileged and confidential.<sup>7</sup>

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<sup>5</sup> See 47 C.F.R. § 0.457(d)(1)(iv).

<sup>6</sup> 5 U.S.C. § 552(b)(4).

<sup>7</sup> See *Washington Post Co. v. U.S. Department of Health and Human Services*, 690 F.2d 525 (D.C. Cir. 1982).

For these reasons, Charter respectfully requests that the Commission withhold from public inspection, and afford confidential treatment to, the Confidential Material.

Best regards,

A handwritten signature in black ink that reads "Matthew A. Brill" followed by a stylized "/ALS".

Matthew A. Brill  
of LATHAM & WATKINS LLP

Enclosure



Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
Schools and Libraries	)	CC Docket No. 02-06
Universal Service Support Mechanism	)	
	)	
Request for Review by	)	Application No. 813171
Charter Communications, Inc. (d/b/a Time	)	
Warner Cable Business LLC) of Decision by the	)	
Universal Service Administrator	)	

**REQUEST FOR REVIEW BY CHARTER COMMUNICATIONS, INC. (D/B/A TIME  
WARNER CABLE BUSINESS LLC) OF FUNDING DECISIONS BY THE  
UNIVERSAL SERVICE ADMINISTRATOR**

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
Schools and Libraries	)	CC Docket No. 02-06
Universal Service Support Mechanism	)	
	)	
Request for Review by	)	Application No. 813171
Charter Communications, Inc. (d/b/a Time	)	
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**REQUEST FOR REVIEW BY CHARTER COMMUNICATIONS, INC. (D/B/A TIME  
WARNER CABLE BUSINESS LLC) OF FUNDING DECISIONS BY THE  
UNIVERSAL SERVICE ADMINISTRATOR**

Pursuant to sections 54.719 and 54.722 of the Commission's rules,<sup>1</sup> Charter Communications, Inc. ("Charter")<sup>2</sup> respectfully requests that the Commission review a Universal Service Administrative Company ("USAC") decision to recover Schools and Libraries universal service program funding ("E-rate") from Charter and the Public Schools of Robeson County, North Carolina ("Robeson") for Funding Year 2011 (FCC Form 471 numbered 813171). Charter disputes USAC's finding that Robeson failed to comply with the Commission's competitive

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<sup>1</sup> 47 C.F.R. § 54.719(b); 47 C.F.R. § 54.722(a).

<sup>2</sup> Charter submits this request for review on behalf of subsidiaries over which it acquired control through its May 2016 merger with Time Warner Cable Inc. Prior to February 2016, Time Warner Cable provided voice and data services to schools and libraries in North Carolina through its subsidiary Time Warner Cable Information Services (North Carolina), LLC ("TWCIS(NC)"), Service Provider Identification Number 143027380). In February 2016, TWCIS(NC)'s Service Provider Identification Number was consolidated with that of another subsidiary, Time Warner Cable Business LLC ("TWCB," Service Provider Identification Number 143048275). Charter continues to provide E-rate services in North Carolina through TWCB, now a wholly owned subsidiary of Charter. For purposes of clarity, Time Warner Cable Inc. and its former subsidiaries, TWCIS(NC) and TWCB, are collectively referred to throughout as "TWC."

bidding rules and asks the Commission to overturn USAC's decision to require repayment of E-rate funds disbursed to Robeson for Funding Year 2011. In all events, even if Robeson had violated the Commission's rules (which it did not), Charter cannot be held jointly and severally liable for any requirement to repay funds to USAC. As such, pursuant to Section 1.1910(b)(3)(i) of the Commission's rules,<sup>3</sup> Charter respectfully requests that its delinquent status be lifted during the pendency of this appeal.

### INTEREST OF THE PARTY

On August 1, 2016, USAC issued a Notification of Commitment Adjustment Letter purporting to hold Charter jointly and severally liable for repaying funds USAC alleges were disbursed in error to Robeson for Funding Year 2011.<sup>4</sup> In turn, Charter is being held in delinquent status pursuant to Section 1.1910(b) of the Commission's rules.<sup>5</sup> Accordingly, Charter is a "party aggrieved" by USAC's action and is entitled to seek review by the Commission.<sup>6</sup>

### QUESTIONS PRESENTED FOR REVIEW

1. Has USAC committed reversible error in finding that Robeson failed to conduct a fair and open competitive bidding process, given that the USAC retroactively applied a Commission rule adopted three years *after* the bidding process at issue and the record contains no other evidence to suggest that Robeson's bidding process was compromised or that Robeson made any false certifications?

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<sup>3</sup> 47 C.F.R. § 1.1910(b)(3)(i).

<sup>4</sup> Notice of Commitment Adjustment Letter from Schools and Libraries Program, USAC, to Everett Teal, (Aug. 1, 2016) ("Notice of Commitment Adjustment Letter") (Exhibit 1).

<sup>5</sup> See 47 C.F.R. § 1.1910(b).

<sup>6</sup> See 47 C.F.R. § 54.719(b).

2. Can Charter be held jointly and severally liable for a reimbursement requirement when it is not alleged to have made any false certifications or committed any rule violations?

### STATEMENT OF FACTS

This appeal arises from USAC's decision to rescind an award of \$879,966.28 in E-rate funding to Robeson for Funding Year 2011—notwithstanding that it approved such funding five years ago following a thorough compliance review.

On December 21, 2006, Robeson filed FCC Form 470 (Application Number 385280000611565) commencing a competitive bidding process for a multi-year contract to purchase broadband Internet access service. Robeson received two competing proposals for service—one from Time Warner Cable (“TWC”) (now part of Charter) and one from a local competitor, {{[REDACTED]}}. {{[REDACTED]}} bid was more than 50 percent higher than the bid submitted by the TWC (TWC submitted a bid of {{[REDACTED]}}, versus {{[REDACTED]}} bid of {{[REDACTED]}}).<sup>7</sup> As a result of that dramatic price differential, on February 5, 2007, Robeson awarded TWC a multi-year contract for broadband Internet access service that included a voluntary extension provision (commencing on July 1, 2007, and expiring on June 30, 2012).<sup>8</sup> On February 7, 2007, Robeson filed FCC Form 471 (Application Number 583371), requesting funding for the first year of that contract.

On February 3, 2007, TWC gave Mr. Everette Teal, Robeson's Director of Technology, two tickets to a college basketball game at the PNC Arena in Raleigh, North Carolina—a courtesy TWC commonly extended to corporate and other enterprise customers at the time.

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<sup>7</sup> “E-rate Bid Response Log, Form 470 No.: 385280000611565” at 1 (“Bid Response Log”) (Exhibit 2).

<sup>8</sup> See Declaration of Everette Teal, *Request for Review of a Decision by the Schools and Libraries Division for Robeson County, North Carolina Public Schools*, CC Docket Nos. 02-6 (filed Dec. 12, 2016) (“Declaration of Everette Teal”).

TWC's records from 2007 are incomplete and the relevant personnel are no longer employed by Charter, but email correspondence indicates that TWC informed Mr. Teal that the tickets were valued at \$35 each.<sup>9</sup> In response to a 2009 inquiry from USAC, TWC informed USAC that it considered the tickets to have a fair market value of \$150 each.

In June 2010, USAC notified Robeson that its funding in connection with the TWC contract was subject to a Special Compliance Review. Robeson's access to funding remained halted until August 2011, when USAC completed the compliance investigation, making no findings of noncompliance. USAC thereupon restored its funding of Robeson's broadband Internet access services. Some five years later, on August 1, 2016, USAC reversed course and, without explanation for its renewed attention, demanded that Robeson (and/or Charter) repay the \$879,966.28 that had been disbursed for Funding Year 2011. Robeson sought reconsideration of that decision by USAC, but USAC denied Robeson's request for review on October 12, 2016.

Notably, Robeson County is one of North Carolina's poorest and most diverse counties, with more than a third of its population living in poverty. Robeson's 41 public schools—all of which receive Title I funding—serve approximately 24,000 students, more than 87% of whom receive free or reduced price meals.<sup>10</sup> In October 2016, Hurricane Matthew struck this already-struggling county, displacing hundreds and bringing "more misery" to a county that has seen

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<sup>9</sup> Email from Andrew Willis, TWC Business to Everette Teal, Robeson Public Schools, (July 14, 2010) ("Willis Email") (Exhibit 3).

<sup>10</sup> "Community," Public Schools of Robeson County, *available at* <http://www.robeson.k12.nc.us/Page/675> (accessed Dec. 7, 2016); "Title 1 Schools 2015-16," North Carolina Department of Public Instruction, *available at* <http://www.dpi.state.nc.us/docs/program-monitoring/titleIA/2015-16.xls> (accessed Dec. 7, 2016); "Free & Reduced Meals Application Data, 2013-14," *available at* <http://www.ncpublicschools.org/docs/fbs/resources/data/freereduced/2013-14freereduced.xls> (accessed Dec. 7, 2016).

“years of things leaving ... manufacturing plants, jobs, payroll, [and] people.”<sup>11</sup> Hurricane Matthew left Robeson’s schools closed for three weeks.<sup>12</sup> Any requirement that Robeson now refund disbursements that USAC made in 2011 *after a thorough compliance review*, and that Robeson expended years ago, would cause a severe and unjustified hardship to Robeson and its students. Moreover, it is completely disproportionate to impose this hardship because of a gift of two college basketball tickets that had no effect on the fairness of the competitive bidding process and which *was not subject to any Commission prohibition* during the relevant time period.

## ARGUMENT

### I. THE COMPETITIVE BIDDING PROCESS WAS FAIR AND OPEN, AND WAS NOT TAINTED BY THE GIFT OF BASKETBALL TICKETS

The fundamental issue in this appeal is whether Robeson’s competitive bidding process was fair and open, as required by the Commission’s rules. The evidence makes clear that it was. TWC submitted a bid that was dramatically lower than the alternative proposal available to Robeson. Robeson awarded the contract based on that obviously superior value proposition. Although TWC offered the basketball tickets to Robeson before the contract was awarded, there is simply no evidence that the tickets had any bearing on the bidding process. Nor was there any rule that independently prohibited the gift when it was made in 2007. Precisely because there were no such rules, in 2010—*three years after* the events at issue in this case—the Commission established rules restricting such gifts. The lack of any gift rules in 2007 is presumably why,

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<sup>11</sup> Martha Quillin, “Misery now, a struggle ahead for Robeson County after flooding from Hurricane Matthew,” *The News & Observer*, (Oct. 15, 2016), *available at* <http://www.newsobserver.com/news/state/north-carolina/article108488912.html>.

<sup>12</sup> “Familiarity key as Robeson County students return 3 weeks after flood,” WRAL, (Oct. 31, 2016) *available at* <http://www.wral.com/robeson-county-schools-reopen-3-weeks-after-hurricane-matthew/16179918/>.

after a lengthy Special Compliance Review in 2010, USAC found no wrongdoing and reauthorized the disbursement of funds to Robeson for Funding Year 2011. It is unclear why, five years after the fact, USAC has reversed course—without any new facts available—and demanded the return of \$879,966.28 in funding that had long since been expended. Regardless of its reasons for reopening this long-settled funding award, USAC erred in applying the Commission’s gift ban retroactively. Moreover, Robeson reasonably believed that the 2007 gift was permissible under applicable state and local procurement guidelines, given TWC’s estimate at the time that the tickets were valued at \$35 each. Unwinding the 2011 funding award now, years after the fact, would cause unjustifiable and serious hardship to Robeson and, in a more general sense, undermine the efficacy of the E-Rate program by depriving schools of the certainty they require when they undertake obligations to pay service providers for supported services.

**A. Robeson Held a Fair and Open Competitive Bidding Process, Resulting in Its Selection of the Service Provider That Submitted the Lowest Qualified Bid.**

Consistent with Commission rules, Robeson held a fair and open competition in 2006 to seek the lowest cost provider of broadband Internet access services at specified speed thresholds. Robeson properly filed FCC Form 470 seeking bids, the request for proposal was available to all potential bidders for the duration of the bidding process, and Robeson waited the minimum of 28 days before making a commitment with its selected service provider.<sup>13</sup> There is no evidence suggesting that any bidders or potential bidders were denied access to the same information or were treated in a disparate manner throughout the procurement process.<sup>14</sup>

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<sup>13</sup> See 47 C.F.R. § 54.503(c); *see also* Declaration of Everette Teal.

<sup>14</sup> See *Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc.*, CC Docket No. 96-45, *Order*, 16 FCC Rcd 4028 ¶ 10 (2000).

In response to its request for proposal, Robeson received two bids. As noted above, {{[REDACTED]}} and TWC competed for the contract, and TWC's bid was {{[REDACTED]}} lower than the competitor's—a differential of more than 50 percent. The Commission's rules plainly require price to be the primary factor in awarding E-rate contracts,<sup>15</sup> and Robeson has confirmed that this large price differential indeed was the dispositive factor in this instance.<sup>16</sup> In addition, Robeson determined that TWC was more qualified and that its submission was technically superior.<sup>17</sup> As such, TWC won a fair and open competitive bidding process and Robeson acquired the most cost-effective services available to it, enabling one of the "nation's ... communities, to obtain access to modern telecommunications and information services for educational purposes, consistent with the statute."<sup>18</sup>

By the same token, because Robeson's award of the contract was properly based on the large price disparity between the two bids it received—rather than based on the modest gift of two basketball tickets—its certification on Form 471 that the school district had "not received anything of value or a promise of anything of value, other than services and equipment sought by means of this form, from the service provider, or any representative or agent thereof or any consultant *in connection with* this request for services" was accurate.<sup>19</sup> That is, because the gift of tickets was not intended to affect and did not affect Robeson's selection of TWC as the

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<sup>15</sup> See *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District El Paso, Texas et al.*, CC Docket Nos. 96-45, 97-21, *Order*, 18 FCC Rcd 26406 ¶ 50 (2003) ("Ysleta Order") (holding that "price must be the primary factor in considering bids").

<sup>16</sup> Declaration of Everette Teal.

<sup>17</sup> Bid Response Log at 2.

<sup>18</sup> Ysleta Order ¶ 4.

<sup>19</sup> See *Schools and Libraries Universal Service, Services Ordered and Certification Form* at 5, OMB 3060-0806 (November 2004) (FCC Form 471) (emphasis added).



winning bidder, there was not a “connection” between the gift and the contract award. In neither its Notice of Commitment Adjustment Letter nor its Appeal Denial Letter did USAC cite any evidence of a nexus between the gift of tickets and the outcome of the competitive bidding process (as there was none), and as discussed below, there was no *per se* ban on gifts in 2007 that permits a funding denial in the absence of such evidence.

**B. USAC Erred in Relying on the Commission Rule Prohibiting Gifts to E-Rate Applicants Because the Rule Was Not Adopted Until Three Years *After* the Gift at Issue.**

USAC’s October 12, 2016, decision denying Robeson’s appeal asserts that “all service provider gifts were prohibited during the funding year that the contract for this FRN was awarded to [TWC].”<sup>20</sup> But that assertion is simply incorrect; it relies on a citation to the Sixth Report and Order from 2010 adopting Section 54.503(d) of the Commission’s rules, notwithstanding that this rule was not in effect when the gift was made in 2007. That retroactive application of the subsequently adopted gift rule constitutes plain error.

Critically, there was no Commission rule prohibiting gifts to E-Rate applications in 2007. It was only in 2010 that the Commission first sought comment on such a prohibition through a Notice of Proposed Rulemaking that proposed new “illustrative guidance” regarding the types of conduct that would prevent fair and open competition.<sup>21</sup> In its proposed rule, the Commission suggested that a “service provider may not offer or provide gifts ... to employees or board members of the applicant,” including “tickets to sporting events.”<sup>22</sup> The only precedent cited by

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<sup>20</sup> Administrator’s Decision on Appeal – Funding Year 2011-2012, Funding Request No. 2209247, at 1 (Oct. 12, 2016) (“Appeal Denial Letter”) (Exhibit 4).

<sup>21</sup> *Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, *Notice of Proposed Rulemaking*, FCC 10-83 ¶ 29 (rel. May 20, 2010).

<sup>22</sup> *Id.* ¶ 29, n.56.

the Commission in support of such a ban was its rules prohibiting Commission employees from receiving gifts.<sup>23</sup> The Commission later adopted this proposal, finding that “the best approach is to make gift rules under the E-rate program consistent with the gift rules applicable to federal agencies.”<sup>24</sup> That new rule, which went into effect on January 3, 2011,<sup>25</sup> prohibits E-rate applicants from soliciting or accepting gifts worth more than \$20 and also prohibits E-rate service providers from offering or providing such gifts, subject to an aggregate limit of \$50 per recipient per year.<sup>26</sup>

USAC’s Appeal Denial Letter would apply the gift restriction from the 2010 Sixth Report and Order to TWC’s gift of two tickets to Robeson in 2007, despite the fact that the rule did not take effect until nearly four years after the gift in question. However, the Wireline Competition Bureau has expressly found that USAC reviews must be undertaken “in accordance with the Commission’s E-rate competitive bidding rules that exist *at the time*.”<sup>27</sup> Accordingly, USAC’s

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<sup>23</sup> *Id.* (citing 47 C.F.R. §§ 1.3001, 1.3002).

<sup>24</sup> *Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, *Sixth Report and Order*, 25 FCC Rcd 18762 ¶¶ 87–88 (2010) (“Sixth Report and Order”).

<sup>25</sup> *See Schools and Libraries Universal Service Support Mechanism and A National Broadband Plan for Our Future*, Sixth Report and Order, 75 Fed. Reg. 75,393 (Dec. 3, 2010).

<sup>26</sup> Sixth Report and Order ¶ 88; 47 C.F.R. § 54.503(d).

<sup>27</sup> *Requests for Review of Decisions of the Universal Service Administrator by Dimmitt Independent School District Dimmitt, Texas, et al.*, CC Docket No. 02-6, *Order*, 26 FCC Rcd 15581 ¶ 10 (2011) (emphasis added) (“Dimmitt Order”); *see also* Kings Canyon Order ¶ 2 (noting that, regardless of if the “analysis of this matter could be different under our current rules,” the Commission’s “clear guidelines on permissible gifts ... became effective on January 3, 2011”); *see also Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (holding that a statutory grant of legislative rulemaking authority does not “encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms”).

retroactive application of the Sixth Report and Order and Section 54.503(d) warrants vacatur of its ruling requiring return of the 2011 funding award.

To the extent that USAC’s Appeal Denial Letter suggests that the Sixth Report and Order merely codified a gift restriction that was *already* in effect (including as far back as 2007), that contention is belied by the Sixth Report and Order itself and the NPRM that preceded it.

Paragraph 88 of the Sixth Report and Order noted that “the restriction on gifts is always applicable,”<sup>28</sup> but it did so only with respect to the new rule’s applicability to the periods before, during, and after the competitive bidding process; it did not purport that the rule “*was* always applicable,” even before it was actually adopted, as USAC’s Appeal Denial Letter suggests. To the contrary, the NPRM makes clear that no gift restriction was in place in 2010,<sup>29</sup> and that is of course why the Commission sought comment on such a rule and ultimately adopted it, effective as of January 2011. The Wireline Competition Bureau also has recognized that the gift restriction adopted in the Sixth Report and Order is “not applicable ... [where] the rules became effective after the completion of the applicants’ competitive bidding processes.”<sup>30</sup>

**C. The Available Evidence Indicates That Robeson’s Certification of Compliance Was Consistent With Its Own Gift Policy and Accurately Reflected the Information Available to Robeson at the Time.**

Although neither Charter nor Robeson possesses complete documentation from nearly ten years ago, the evidence available today indicates that, in 2007, the basketball tickets provided by TWC were valued at \$35 each—an amount that complied with Robeson’s gift policy. Before the Commission adopted its own rule restricting gifts in 2010, E-rate applicants were subject to

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<sup>28</sup> Sixth Report and Order ¶ 88 (cited in Appeal Denial Letter at 2).

<sup>29</sup> See *supra* n.21.

<sup>30</sup> Dimmitt Order ¶ 10.

“applicable state and local restrictions regarding gifts.”<sup>31</sup> The Robeson Board of Education had gift restrictions in place in 2007 that required the school board to grant written approval for all gifts of \$250 or greater.<sup>32</sup> Mr. Teal, the Robeson employee who received the tickets, believed in good faith that they were valued well below this threshold, and accordingly did not have any basis to seek written approval for a gift valued above \$250. Specifically, e-mail records indicate that TWC informed Mr. Teal that the tickets were valued at \$35 each.<sup>33</sup> As noted above, TWC indicated to USAC (unbeknownst to Robeson) in 2009 that the tickets had a value of \$150 each.<sup>34</sup> Even if that higher valuation was accurate, Robeson’s reliance on the lower estimate provided to it by TWC—the only such evidence available to Robeson—made its certification of compliance with Board of Education policy accurate, to the best of Robeson’s knowledge. There is no basis to hold that a service provider’s subsequent provision of information that was not available to the E-Rate applicant somehow renders the applicant’s certification false when made.

**D. Reopening the Question of Robeson’s Entitlement to Funding Long After It Was Awarded, and Notwithstanding USAC’s Decision to Award Funding After a Special Compliance Review, Would Impose Undue Hardships and Undermine E-Rate Applicants’ Ability to Rely on Decisions Going Forward.**

Even apart from the absence of any evidentiary basis or rule violation justifying revocation of Robeson’s funding for Funding Year 2011, the timing of USAC’s attempt to rescind a funding award issued five years ago—following USAC’s completion of its Special Compliance Review—makes the Appeal Denial Letter even more unreasonable. During its Special Compliance Review, USAC instituted a pause in funding of more than 14 months while it investigated Robeson’s procurement of services from TWC. All relevant information was

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<sup>31</sup> Sixth Report and Order ¶ 89.

<sup>32</sup> Excerpt from Robeson Board of Education Policies (Exhibit 5).

<sup>33</sup> Willis Email.

<sup>34</sup> See *supra* at 4.

made available by Robeson and TWC during that Special Compliance Review, and no new facts have since come to light regarding the single gift TWC made to Robeson in 2007. In August 2011, USAC resumed funding for the contract without making any adverse findings regarding Robeson's compliance with the Commission's rules. Robeson, one of the poorest counties in the country, accordingly relied on USAC's funding award and continued to accept and expend E-Rate funding for the procurement of broadband Internet access services. Having induced Robeson's reliance on that funding through its decision to award funding after a full investigation, there was no legitimate basis for USAC to reverse course years later, and without any new facts or evidence.

USAC's decision to seek reimbursement, nearly 10 years after the fact, of a funding award that has already been the subject of a thorough review process, runs counter to important principles of finality and repose. Courts have long noted the importance of placing some constraint on government enforcement authority and the need "to promote finality, repose, and the efficient and prompt administration of justice. . . . to tell citizens and businesses when they no longer have to fear finding the government at their front door demanding satisfaction."<sup>35</sup> After USAC's apparent dismissal of its investigation and its award of funding in 2011, Robeson and TWC reasonably believed that any potential claims had been resolved. Accordingly, TWC provided the requested services pursuant to the contract at issue, and Robeson relied on the E-Rate funding award to cover a substantial portion of the cost. Had USAC withheld the funding or otherwise indicated continuing concerns, Robeson could have responded by cancelling the contract and undertaking a new competitive bidding process. But USAC's course of conduct gave Robeson no reason to do so.

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<sup>35</sup> *AKM LLC v. Sec'y of Labor*, 675 F.3d 752, 767 (D.C. Cir. 2012) (Brown, J. concurring) (citing *John R. Sand & Gravel Co. v. U.S.*, 552 U.S. 130, 133 (2008)).

Additionally, the scale of USAC's demand for repayment offends principles of fairness and equity. After taking no action following its Special Compliance Review, USAC now demands nearly \$880,000 from a poverty-stricken school district based on a gift of tickets worth no more than \$150 each (even apart from the fact that Robeson reasonably believed the tickets were worth only \$35 each), notwithstanding the absence of any evidence that the gift had any bearing on the competitive bidding process. Indeed, as shown above, the reason TWC's bid was accepted plainly was that TWC offered a dramatically lower price for the services requested by Robeson. Had the gift been followed by a contract award where the applicant *declined* to accept the low bid, a rescission award might be warranted, but here there is simply no reason to impose such a draconian penalty on Robeson.

**II. WHILE THERE IS NO LAWFUL BASIS TO REQUIRE REPAYMENT OF ANY PORTION OF THE 2011 FUND AWARD, IN ALL EVENTS CHARTER MAY NOT BE HELD JOINTLY AND SEVERALLY LIABLE BASED ON AN E-RATE APPLICANT'S CERTIFICATIONS**

As set forth above, there is no basis for any adverse action against Robeson in connection with the 2011 funding award. But if the Commission nevertheless upholds USAC's reimbursement order, it may not impose joint and several liability on Charter, as USAC purported to do. Rather, the Commission has made clear that USAC can direct recovery actions only "to the party or parties that committed the rule or statutory violation in question."<sup>36</sup> And here, the only allegations of non-compliance pertain to *Robeson's* certifications in its Form 471 and its supposed non-compliance with the gift restriction adopted in the Sixth Report and Order.

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<sup>36</sup> *Federal-State Joint Board on Universal Service and Changes to the Board of Directors for the National Exchange Carrier Association, Inc. and Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 96-45, 87-21, 02-6, *Order on Reconsideration and Fourth Report and Order*, FCC 04-181 ¶¶ 10, 11 (rel. July 30, 2004) (confirming that compliance obligations belong to the applicant, as "the school or library is the entity that submits FCC Form 471").

As discussed in Section I.B, above, although the current gift restriction prohibits service providers from offering gifts to E-Rate applicants before, during, or after the competitive bidding process,<sup>37</sup> that rule was not effective until 2011, nearly four years after the gift at issue here. There is accordingly no way TWC could have violated any Commission rule by offering the basketball tickets to Robeson. USAC does not disagree; it asserts only that “the *applicant* [Robeson] failed to comply with the FCC’s competitive bidding rules.”<sup>38</sup> Nor does USAC contend that TWC made any false certification in connection with the funding award. Therefore, in the event the Commission finds any violation by Robeson (which it plainly should not), there is no lawful basis to shift the resulting liability to Charter.

### CONCLUSION

For the foregoing reasons, Charter urges the Commission to grant Charter’s request for review and overturn USAC’s unlawful and inequitable demand for recovery from Robeson and Charter.

Respectfully submitted,

Vincent M. Paladini  
CHARTER COMMUNICATIONS, INC.  
1099 New York Avenue, NW  
Suite 650  
Washington, DC 20001

/s/ Matthew A. Brill  
Matthew A. Brill  
Elizabeth R. Park  
Alexander L. Stout  
LATHAM & WATKINS LLP  
555 Eleventh Street, NW  
Suite 1000  
Washington, DC 20004

December 12, 2016

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<sup>37</sup> 47 C.F.R. § 54.503(d).

<sup>38</sup> Appeal Denial Letter at 1 (emphasis added).

## AFFIDAVIT OF DAVID LAFRANCE

1. My name is David LaFrance. I am employed as Senior Manager, Regulatory at Charter Communications, Inc. ("Charter"). This affidavit is based on my personal knowledge and a review of Charter's business records.

2. I have held my current position at Charter since the company's merger with Time Warner Cable ("TWC") in May 2016. Prior to the merger, I served in a similar position at TWC for thirty-one months.

3. I have reviewed the foregoing Request for Review, and the information contained therein is truthful and accurate to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12 day of December, 2016.



David LaFrance  
Senior Manager, Regulatory  
Charter Communications, Inc.



# EXHIBIT 1



Schools and Libraries Program

Notification of Commitment Adjustment Letter

Funding Year 2011: July 1, 2011 - June 30, 2012

August 01, 2016

Everette Teal  
ROBESON COUNTY PUBLIC SCHOOLS  
PO DRAWER 2909  
LUMBERTON, NC 28359 2909

Re: Form 471 Application Number:	813171
Funding Year:	2011
Applicant's Form Identifier:	Internet-Access 11/12
Billed Entity Number:	126994
FCC Registration Number:	0012037131
SPIN:	143048275
Service Provider Name:	Time Warner Cable Business LLC
Service Provider Contact Person:	David Lafrance

Our routine review of Schools and Libraries Program (SLP) funding commitments has revealed certain applications where funds were committed in violation of SLP rules.

In order to be sure that no funds are used in violation of SLP rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see <https://www.fcc.gov/encyclopedia/red-light-frequently-asked-questions>.

## REDACTED FOR PUBLIC INSPECTION

TO APPEAL THIS DECISION:

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRNs) you are appealing. Your letter of appeal must include the
  - Billed Entity Name,
  - Form 471 Application Number,
  - Billed Entity Number, and
  - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

We strongly recommend that you use one of the electronic filing options. To submit your appeal to USAC by email, email your appeal to [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org) or submit your appeal electronically by using the "Submit a Question" feature on the USAC website. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal  
Schools and Libraries Program - Correspondence Unit  
30 Lanidex Plaza West  
PO Box 685  
Parsippany, NJ 07054-0685

For more information on submitting an appeal to USAC, see "Appeals" in the "Schools and Libraries" section of the USAC website.



## REDACTED FOR PUBLIC INSPECTION

### FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letters" posted at <http://www.usac.org/sl/tools/samples.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with SLP rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Program  
Universal Services Administrative Company

cc: David Lafrance  
Time Warner Cable Business LLC

# REDACTED FOR PUBLIC INSPECTION

Funding Commitment Adjustment Report for  
Form 471 Application Number: 813171

Funding Request Number:	2209247
Services Ordered:	INTERNET ACCESS
SPIN:	143048275
Service Provider Name:	Time Warner Cable Business LLC
Contract Number:	E2007-01
Billing Account Number:	910-671-6054
Site Identifier:	126994
Original Funding Commitment:	\$879,966.28
Commitment Adjustment Amount:	\$879,966.28
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$879,966.28
Funds to be Recovered from Applicant:	\$879,966.28
Funding Commitment Adjustment Explanation:	

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. Documents provided by you and/or Time Warner Cable indicate that there was not a fair and open competitive bid process free from conflicts of interest. The documentation indicates that prior to/throughout your contractual relationship with Time Warner Cable that you were offered and accepted gifts of value from the service provider, which is not allowed under your districts local gift rule policy. This action resulted in a competitive process that was no longer fair and open. Accordingly, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant and the service provider.

## **EXHIBIT 2**

**E-Rate Bid Response Log**

Funding Year: 2007-2008

Page 1 of 1

Form 470 No.: 385280000611565

Allowable Contract Date: 1/19/2007

Form 470 Service or Function*	Vendor Response Information***					
FRN**	Date	Contact Type	Vendor	SPIN	Comments	
<u>Telecommunications Services</u>						
<u>Internet Access</u>						
<u>Internal Connections</u>						

**Notes:**

- \* Include every service listed on the Form 470. If a service is split into separate FRNs, insert additional lines.
- \*\* Enter FRN number after Form 471 application is filed and funding request numbers are assigned.
- \*\*\* An existing service provider can be considered a bidder based on current rates and services. If an existing vendor does not submit a new bid, enter "N/A" in the Date column, and "Existing Provider" in the Comments column.

# E-Rate Bid Assessment Worksheet

Funding Year 2007-2008

Page 1 of 1

Project or Service  
Description

Internet Access

Vendor Scoring (use additional worksheets if necessary)

Selection Criteria	Weight*	Raw Score**	Weighted Score***	Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score	Raw Score	Weighted Score
Cost Proposal											
Understanding of Needs											
Technical Approach											
Qualifications/EXP.											
Financial Stability											
Product Knowledge											
Customer Service Support											
Overall Ranking											

Vendor Selected: Time Warner Cable  
Approved By: Everette Teal  
Title: Director of Technology  
Date: 22-Jan-07

Bid Assessment Comments, if needed:

**Notes:**

- \* Percentage weights must add up to 100%. Price must be weighted the heaviest.
- \*\* Evaluated on a scale of 1 to 5: 1=worst, 5=best.
- \*\*\* Weight x Raw Score



# **EXHIBIT 3**

**Subject:** RE: needed information

**Date:** Wednesday, July 14, 2010 at 2:34:56 PM Eastern Daylight Time

**From:** Willis, Andrew

**To:** 'Everette Teal'

Everette -

My marketing team have records of TWCBC providing 2 tickets....

**Andy Willis**  
**Time Warner Cable Business Class**

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**From:** Everette Teal [mailto:REDACTED]  
**Sent:** Wednesday, July 14, 2010 3:11 PM  
**To:** Willis, Andrew  
**Subject:** needed information

Please state the following information on company letterhead. Time Warner Cable gave Everette Teal, Director of Technology for the Public Schools of Robeson County one ticket at the dollar value of \$35.00 to attend the North Carolina State University versus University of North Carolina on February 3, 2007.

**Everette L. Teal**

Director of Technology, PSRC  
REDACTED Office  
REDACTED Fax

***Life is not measured by the number of breaths we take, but by the moments that take our breath away.***

*Email correspondence to and from this address is subject to public records requests pursuant to the North Carolina Public Records Law, resulting in monitoring and potential disclosure of this message to third parties.*

*In compliance with federal law, Public Schools of Robeson County administers all education programs, employment activities and admissions without discrimination against any person on the basis of*

## REDACTED FOR PUBLIC INSPECTION

*gender, race, color, religion, national origin, age or disability.*

This E-mail and any of its attachments may contain Time Warner Cable proprietary information, which is privileged, confidential, or subject to copyright belonging to Time Warner Cable. This E-mail is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this E-mail, you are hereby notified that any dissemination, distribution, copying, or action taken in relation to the contents of and attachments to this E-mail is strictly prohibited and may be unlawful. If you have received this E-mail in error, please notify the sender immediately and permanently delete the original and any copy of this E-mail and any printout.

# EXHIBIT 4

Cindy Johnson  
E-Rate Services, LLC  
P. O. Box 987  
Sanford, NC 27330

Billed Entity Number: 126994  
Form 471 Application Number: 813171  
Form 486 Application Number:



Universal Service Administrative Company  
Schools & Libraries Division

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Administrator's Decision on Appeal – Funding Year 2011-2012

October 12, 2016

Cindy Johnson  
E-Rate Services, LLC  
P. O. Box 987  
Sanford, NC 27330

Re: Applicant Name: ROBESON COUNTY PUBLIC SCHOOLS  
Billed Entity Number: 126994  
Form 471 Application Number: 813171  
Funding Request Number(s): 2209247  
Your Correspondence Dated: September 24, 2016

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2011 Notification of Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2209247  
Decision on Appeal: **Denied**  
Explanation:

- During the appeal review of your FCC Form 471# 813171 you requested reversal of the COMAD decision to seek recovery of improperly disbursed funds. It has been determined that for FRN 2209247 the applicant failed to comply with the FCC's competitive bidding rules. FCC rules require applicants to conduct a fair and open competitive bidding process that is free from conflicts of interest. (Lazo Technologies Order, DA 09-1797, para. 5). Consistent with this requirement, all service provider gifts were prohibited during the funding year that the contract for this FRN was awarded to Time Warner Cable Information Services (TWCIS). The Sixth Report and Order (FCC 10-175, para. 88) makes clear that the FCC's restrictions on gifts were always applicable and gift activities that occur outside of the bidding process may undermine the competitive bidding process. Applicants are required to certify on the FCC Form 471 that they have not received anything



of value from service providers. The documentation provided to USAC shows that on February 3, 2007, a school employee was offered and accepted gifts from TWCIS in the form of two tickets to TWC Suite for a basketball game. The resale value of the tickets was over \$150 apiece. Since the acceptance of the gift occurred at the time of the filing of the FCC Form 470 that established the bidding for this contract, any contract signed as a result of that competitive bidding process and the duration of that contract is in violation of competitive bidding requirements. The acceptance of these tickets violated the FCC's requirements to conduct a fair and open competitive bidding process. Consequently, your appeal is denied.

- An eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids for all services eligible for support under the program. *See* 47 C.F.R. sec.54.503(b). All entities participating in the schools and libraries universal service support program must conduct a fair and open competitive bidding process. *See* 47 C.F.R. sec.54.503(a). An eligible school, library, or consortium may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the schools and libraries universal service program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value. Modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, and items worth \$20 or less, including meals, may be offered or provided, and accepted by any individuals or entities subject to this rule, if the value of these items received by any individual does not exceed \$50 from any one service provider per funding year. *See* 47 C.F.R. 54.503(d)(1). The terms "school, library, or consortium" include all individuals who are on the governing boards of such entities (such as members of a school committee), and all employees, officers, representatives, agents, consultants or independent contractors of such entities involved on behalf of such school, library, or consortium with the E-rate Program, including individuals who prepare, approve, sign or submit E-rate applications, technology plans, or other forms related to the E-rate Program, or who prepare bids, communicate or work with E-rate service providers, E-rate consultants, or with USAC, as well as any staff of such entities responsible for monitoring compliance with the E-rate Program. The term "service provider" includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, or independent contractors of such entities. *See* 47 C.F.R. sec. 54.503(d)(2)(i) and (ii).

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

cc: Everette Teal



# **EXHIBIT 5**

### **Admissions and Gate Receipts**

The Board of Education for the Public Schools of Robeson County shall appoint a treasurer for each school within the administrative unit. The treasurer shall keep a complete record of all monies in his charge in such form and detail as may be prescribed by the finance officer of the Public Schools of Robeson County and shall make such reports to the Superintendent and finance officer as they or the Board may prescribe.

### **Gifts and Bequest**

The Board will accept voluntary contributions from individuals or organizations for the enhancement of programs offered by the Board.

The Board establishes the following conditions for the acceptance of gifts. Other conditions may be set as the Board deems appropriate.

#### **Financial Gifts:**

1. The donor may designate funds for use in a particular area.
2. The specific manner in which funds are expended within a designated area will be determined under the direction of the Superintendent or Principal.
3. The title to supplies and equipment purchased with funds from any donor will remain with the Board.
4. The Board accepts no responsibility for continuance of any program initiated with donor contributions once funds are expended.
5. The Board will provide, upon request, a financial report regarding the expenditure of funds. The report will be written and in a format determined by the Board.

#### **None-Financial Gifts:**

1. At least one month prior to offering the gift the donor should give written notification to the Superintendent which states the nature of the gift and the purpose for which it is donated, provided the value of the gift exceeds \$250.00.
2. The Superintendent shall ensure that the gift imposes no financial burden or obligation to the school system.
3. The Superintendent shall present information provided by the donor to the Board at its next regular meeting and shall make a recommendation regarding acceptance of the gift. The Board shall either accept or reject the gift in writing. If the Board accepts the gift in writing, the donor harmless from and against any loss, damage, claim, cause of action or injury caused by the gift or the use of the gift, including a reasonable attorney's fee for defending any such claim or cause of action.

The Board will determine the appropriateness of each gift or contribution for the educational programs of the school system and reserves to itself the right to accept or reject any such gift or contribution.

The Public Schools of Robeson County welcomes gifts of books, computers, and other related information and technology resources that support instruction. Through the generous gifts of past and present benefactors, our schools have greatly benefited.

It is the responsibility of the superintendent or designee to review such offers to donate and make selection decisions based on need, usability, maintainability, and feasibility.

Gifts are accepted with the understanding that they become the property of the Public Schools of Robeson County upon receipt, and that the school system may make all necessary decisions as to their retention, location, and other considerations relating to their use and disposition.

The following limitations are placed on the acceptance of gifts:

- the appraisal of a gift to the school system is the responsibility of the donor, as members of the school system staff are not permitted to appraise gifts.
- gifts offered with conditions attached will not be accepted without approval of the Board of Education upon recommendations from Attorney of Record for School System.

Approved by the Board of Education August 16, 1994  
Revised September 13, 1999  
Revised December 13, 1999  
Revised July 14, 2003

### **Investment Income**

See "Cash Management" policy.

### **Other Miscellaneous Revenue**

The Board has authorized the imposition of a \$5.00 fee for the duplication of employee W-2 forms to reimburse the school system for costs incurred.

Approved by the Board of Education August 16, 1994

### **SOLICITATIONS/FUND RAISING**

The board is committed to minimizing disruptions to instructional time and the educational environment.

1. Outside organizations or sales representatives may not solicit employees or students during working hours or the school day unless the superintendent grants prior written approval. Employees and students shall not be required, under any circumstances, to make a contribution to any organization. No school employee or student shall be required or pressured to attend any solicitation program.

## **CERTIFICATE OF SERVICE**

I, Alexander L. Stout, hereby certify that on December 12, 2016, I caused a true and correct copy of the foregoing Request for Review to be served electronically and by overnight delivery to the following:

Universal Service Administrative Company  
Schools and Libraries Program Correspondence Unit  
Attn: Letter of Appeal  
30 Lanidex Plaza West, PO Box 685  
Parsippany, NJ 07054-0685  
appeals@sl.universalservice.org

/s/ Alexander L. Stout  
Alexander L. Stout  
Latham & Watkins LLP